

**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: CIVIL TERM: PART**

NAILAH GARY,

Plaintiff,

vs.

**THE CITY OF NEW YORK, OFFICER
ROHAN LUMSDEN, OFFICER JOSEPH
DIAZ, SERGEANT JAMES BOYLE,
MANHATTAN COLLEGE, AND JUAN
CEREZO,**

Defendants.

COMPLAINT

Index No. _____

Plaintiff NAILAH GARY, by her attorney at RICKNER PLLC, complaining of the defendants, respectfully alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff Nailah Gary brings this action for compensatory damages, punitive damages, and attorney's fees pursuant to the statutory and common law of the State of New York for assault, battery, and false imprisonment; pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of her rights under the Constitution of the United States of America; and under the New York State Constitution.

THE PARTIES, JURISDICTION, AND VENUE

2. At all times hereinafter mentioned, the plaintiff Nailah Gary ("Plaintiff") was a resident of the County of Westchester, State of New York.

3. Defendant City of New York was and is a municipality that is a political subdivision of the State of New York, was the employer of the officer defendants, and is and was

at all times relevant to this Complaint responsible for the policies, practices, and customs of the New York City Police Department ("NYPD").

4. Defendant Rohan Lumsden, Shield Number 2014, ("Lumsden") was at all times relevant to this Complaint a duly appointed and acting officer of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is sued in his individual capacity.

5. Defendant Rohan Lumsden is entitled to indemnification under New York General Municipal Law Section 50-k and by contract.

6. Defendant Joseph Diaz, Shield Number 25545, ("Diaz") was at all times relevant to this Complaint a duly appointed and acting officer of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is sued in his individual capacity.

7. Defendant Joseph Diaz is entitled to indemnification under New York General Municipal Law Section 50-k and by contract.

8. Defendant James Boyle, Shield Number 2959, ("Boyle") was at all times relevant to this Complaint a duly appointed and acting sergeant of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is sued in his individual capacity.

9. Defendant James Boyle is entitled to indemnification under New York General Municipal Law Section 50-k and by contract.

10. Defendant Manhattan College is a private, Roman Catholic, liberal arts college located at 4513 Manhattan College Pkwy, Bronx, New York 10471. Plaintiff was a student at Manhattan College at all times relevant to this Complaint.

11. Manhattan College Director of Public Safety, Juan Cerezo, ("Cerezo") was at all times relevant to this Complaint an employee at Manhattan College and acting within the scope of that employment.

12. The acts and omissions giving rise to this Complaint occurred in Bronx County.

13. Plaintiff has complied with the requirements of New York City General Municipal Law § 50-i. Plaintiff made and served a notice of claim on all municipal defendants on June 16, 2017, within the time required by New York General Municipal Law § 50-e. More than thirty days have elapsed since the service of those notices, and no offer of settlement has been made.

14. Plaintiff submitted to a hearing pursuant to New York General Municipal Law § 50-h on December 6, 2017.

15. Plaintiff's damages exceed \$25,000.

16. Accordingly, this Court has personal and subject matter jurisdiction over this matter, and venue in Bronx County is proper.

JURY DEMAND

17. Plaintiff Nailah Gary respectfully demands a trial by jury of all issues in this matter.

STATEMENT OF FACTS COMMON TO ALL CLAIMS

18. On April 24, 2017, Plaintiff Nailah Gary, then a senior at Manhattan College, was in the middle of her final exams, and was somewhat stressed out, given all the work she had to do.

19. One of Plaintiff's friends was concerned, so she called the school to check in on Plaintiff, and make sure she was all right.

20. Security from Manhattan College, including Cerezo, located Plaintiff, who was taking an exam. She calmly told them that she was fine, and continued taking the exam.

21. After her exam, she went to the school parking lot, to sit in her car and continue her studies.

22. Cerezo, however, called 911 and told them, falsely, that Plaintiff was, in essence, suicidal, a danger to herself and others. This was not true, and Cerezo had no factual basis for making this false statement.

23. Lumsden, Diaz, Boyle, and Cerezo located Plaintiff at her car and confronted her. She was calm and collected, and phoned her mother. She rolled down her window part way, told the officers she was fine, and offered to let them talk to her mother who could confirm that she was fine.

24. It was obvious that Plaintiff was not a danger to herself or others, and was in no acute distress whatsoever.

25. Lumsden, however, had no interest in talking to Plaintiff's mother, and he forced his arm through the partially open window, grabbed Plaintiff by her hair, tearing some of it out, forced open the car door, and dragged her out of the car.

26. The officers applied unreasonable, excessive force, causing bruises on her body.

They also tightened her handcuffs, causing her pain.

27. Plaintiff was taken to NYC Health + Hospitals/North Central Bronx. The doctors examined her, found her calm and collected, and determined that she was not a danger to herself or others. She was soon released.

INJURIES AND DAMAGES

28. This action seeks damages on behalf of Plaintiff for the extraordinary emotional pain and suffering, loss of liberty, and injuries to his person, that Plaintiff was forced to endure as a consequence of Defendants' decidedly wrongful actions.

29. Plaintiff did not commit any illegal acts or offenses on April 24, 2017.

30. The conduct of Lumsden, Diaz, Boyle, and Cerezo, who acted at all times under color of state law and within the scope of their employment and authority, as employees of the City of New York and Manhattan College, directly and proximately caused Plaintiff to suffer loss of liberty, physical and emotional injury, mental anguish, humiliation and embarrassment.

31. Defendants acted with reckless and wanton disregard for the rights of Plaintiff.

32. As a result of all of the acts alleged herein, Plaintiff suffered and continues to suffer physical and mental pain and anguish, and emotional distress.

33. All of the causes of action pleaded herein fall within one or more of the exceptions set forth in New York's Civil Practice Law & Rules 1602 with respect to joint and several liability.

**FIRST CLAIM FOR RELIEF:
BATTERY UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, AND BOYLE**

34. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

35. On April 24, 2017, Lumsden, Boyle, and Diaz intentionally made physical contact with Plaintiff, and a reasonable person would find this contact offensive.

36. This physical contact was without Plaintiff's consent.

37. Defendant the City of New York is vicariously liable for these actions, and thus for Plaintiff's injury and damages, because Lumsden, Boyle, and Diaz were acting in furtherance of the City of New York's business and within the scope of the City of New York's authority.

38. As a result of the above impermissible conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**SECOND CLAIM FOR RELIEF:
FALSE IMPRISONMENT UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, BOYLE, AND CEREZO**

39. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

40. On April 24, 2017, Plaintiff was arrested, handcuffed, and detained in the absence of probable cause by Lumsden, Diaz, and Boyle, based on the false statements and explicit encouragement of Cerezo.

41. That at all times hereinafter mentioned, said arrest, confinement and restraint of liberty was not otherwise privileged.

42. Plaintiff was conscious of the confinement and did not consent to such confinement.

43. Defendants the City of New York and Manhattan College are vicariously liable for the actions of Lumsden, Diaz, Boyle, and Cerezo, and thus for Plaintiff's injury and damages, because the Individual Defendants were acting in furtherance of the City of New York and Manhattan College's business and within the scope of their authority.

44. As a result of the above impermissible conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**THIRD CLAIM FOR RELIEF:
FALSE ARREST UNDER 42 U.S.C. § 1983
AGAINST LUMSDEN, DIAZ, BOYLE, AND CEREZO**

45. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

46. On April 24, 2017, Plaintiff was arrested, handcuffed, and detained in the absence of probable cause by Lumsden, Diaz, and Boyle, based on the false statements and explicit encouragement of Cerezo.

47. That by virtue of the aforementioned acts, Plaintiff was deprived of her civil rights guaranteed under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable or unlawful searches and seizures, and Lumsden, Diaz, Boyle, and Cerezo therefore are liable to Plaintiff for damages under 42 U.S.C. § 1983.

48. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**FOURTH CLAIM FOR RELIEF:
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983
AGAINST LUMSDEN, DIAZ, AND BOYLE**

49. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

50. Plaintiff's seizure and detention at the hands of Lumsden, Diaz, and Boyle was made in the absence of probable cause or arguable probable cause.

51. Even assuming arguendo that Plaintiff's arrest was lawful, Lumsden, Diaz, and Boyle engaged in the use of force that was excessive, malicious, gratuitous, and with the intention of inflicting physical and psychological harm to plaintiff.

52. The behavior of these Defendants was the proximate cause of the physical and psychological injuries that plaintiff sustained on the date of his arrest.

53. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**FIFTH CLAIM FOR RELIEF:
FAILURE TO INTERCEDE UNDER 42 U.S.C. § 1983
AGAINST LUMSDEN, DIAZ, AND BOYLE**

54. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

55. By their conduct and under color of state law, Defendants Lumsden, and Diaz had opportunities to intercede on behalf of Plaintiff to prevent her false arrest and the excessive force used against her, but, due to their intentional conduct, recklessness, or deliberate indifference, declined or refused to do so.

56. These Defendants' failures to intercede violated Plaintiff's clearly established constitutional right to be free from unreasonable search and seizure and not to be deprived of liberty without due process of law as guaranteed by the Fourth, and Fourteenth Amendments.

57. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**SIXTH CLAIM FOR RELIEF:
INTENTIONAL, RECKLESS, OR NEGLIGENT INFLICTION OF EMOTIONAL
DISTRESS UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, BOYLE, AND CEREZO**

58. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

59. The improper, deliberate, and traumatizing conduct of Lumsden, Diaz, Boyle, and Cerezo in deliberately causing, or recklessly disregarding the risk of causing, the traumatic assault on and false arrest of Plaintiff directly and proximately caused the grievous injuries and damages set forth above.

60. In the alternative, Lumsden, Diaz, Boyle, and Cerezo acted negligently and grossly negligently, and in breach of their duties owed to Plaintiff.

61. As a result of the above tortious conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**SEVENTH CLAIM FOR RELIEF:
NEGLIGENCE UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, BOYLE, CEREZO, AND MANHATTAN COLLEGE**

62. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

63. Defendants Lumsden, Diaz, Boyle, Cerezo, and Manhattan College are liable for negligence, having breached their duty of reasonable care to Plaintiff.

64. As a result of the above tortious conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**EIGHTH CLAIM FOR RELIEF:
RESPONDEAT SUPERIOR UNDER STATE LAW
AGAINST THE CITY OF NEW YORK AND MANHATTAN COLLEGE**

65. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

66. At all times relevant to this Complaint, Lumsden, Diaz, and Boyle acted as agents of the City of New York, in furtherance of the business, including law enforcement functions, of the City of New York, and within the scope of their employment or agency with the City of New York.

67. Under the doctrine of respondeat superior, the City of New York is liable for its agents' state law torts, detailed above.

68. At all times relevant to this Complaint, Cerezo acted as and agent of Manhattan College, in furtherance of its business, and at all times Cerezo was acting within the scope of his employment.

69. Under the doctrine of respondeat superior, Manhattan College is liable for its agents' state law torts, detailed above.

**NINTH CLAIM FOR RELIEF:
FAILURE TO TRAIN AND SUPERVISE UNDER STATE LAW
AGAINST THE CITY OF NEW YORK AND MANHATTAN COLLEGE**

70. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

71. At all times relevant to this Complaint, the City of New York knew that Lumsden, Diaz, and Boyle would face instances where they needed to evaluate whether an individual was a danger to herself or others, and required medical care, and an individual who did not need to be subject to arrest.

72. The City of New York failed to train and properly supervise Lumsden, Diaz, and Boyle with respect to alleged emotionally disturbed persons. This negligent failure was the proximate cause of Plaintiff's injuries, detailed above.

73. Under the doctrine of respondeat superior, the City of New York is liable for its agents' state law torts, detailed above.

74. At all times relevant to this Complaint, Manhattan College knew that Cerezo would face instances where they needed to evaluate whether an individual was a danger to herself or others, and required medical care.

75. Manhattan College failed to train and properly supervise Cerezo with respect to alleged emotionally disturbed persons. This negligent failure was the proximate cause of Plaintiff's injuries, detailed above

**NINTH CLAIM FOR RELIEF:
VIOLATION OF ARTICLE I, § 12 OF THE NEW YORK STATE CONSTITUTION
AGAINST ALL DEFENDANTS**

76. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

77. That by virtue of the aforementioned acts, Lumsden, Diaz, and Boyle are liable to Plaintiff for violating her right to be free of unreasonable and unlawful searches and seizures under Article I, § 12 of the New York State Constitution.

78. The acts and conduct of the agents and employees of defendants were the direct and proximate cause of injury and damage to Plaintiff and violated her statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

79. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom

WHEREFORE, Plaintiff Nailah Gary demands the following relief jointly and severally against all of the defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
April 23, 2018

Rickner PLLC

By:



Rob Rickner

233 Broadway Suite 2220
New York, New York 10279
Phone: (212) 300-6506

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 04/23/2018

Fax: (888) 390-5401
Attorney for Plaintiff

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----x
Nailah Gary

Plaintiff/Petitioner,

-against-

Index No. 24708/2018E

The City of New York, Rohan Lumsden, Joseph Diaz,
James Boyle, Manhattan College, Juan

Defendant/Respondent.
-----x

**NOTICE OF COMMENCEMENT OF ACTION SUBJECT
TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efileunrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 04/23/2018


Signature

ROBERT H RICKNER

Name

RICKNER PLLC

Firm Name

233 Broadway, Suite 2220

Address

New York, NY 10279

City, State, and Zip

212-300-6506

Phone

rob@ricknerpllc.com

E-Mail

To:

The City of New York
100 Church St
New York, NY 10007

Sergeant James Boyle
Officer Rohan Lumsden
Officer Joseph Diaz
NYPD 50th Precinct
3450 Kingsbridge Ave
Bronx, NY 10463

Manhattan College
Juan Cerezo
4513 Manhattan College Pkwy
Bronx, NY 10471

9/3/15

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BRONX COUNTY: CIVIL TERM: PART**

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**THE CITY OF NEW YORK, OFFICER
ROHAN LUMSDEN, OFFICER JOSEPH
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Defendants.

SUMMONS

Index No. _____

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorney(s) within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Plaintiff's residence.

Dated: New York, New York
April 23, 2018

Rickner PLLC

By:


Rob Rickner

233 Broadway Suite 2220
New York, New York 10279
Phone: (212) 300-6506
Fax: (888) 390-5401
Attorney for Plaintiff

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RECEIVED NYSCEF: 04/23/2018

TO:

The City of New York
100 Church St
New York, NY 10007

Sergeant James Boyle
Officer Rohan Lumsden
Officer Joseph Diaz
NYPD 50th Precinct
3450 Kingsbridge Ave
Bronx, NY 10463

Manhattan College
Juan Cerezo
4513 Manhattan College Pkwy
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5. Defendant Rohan Lumsden is entitled to indemnification under New York General Municipal Law Section 50-k and by contract.

6. Defendant Joseph Diaz, Shield Number 25545, ("Diaz") was at all times relevant to this Complaint a duly appointed and acting officer of the NYPD, acting under color of law and in his individual capacity within the scope of employment pursuant to the statutes, ordinances, regulations, policies, customs, and usage of the City of New York and the State of New York. He is sued in his individual capacity.

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47. That by virtue of the aforementioned acts, Plaintiff was deprived of her civil rights guaranteed under the Fourth and Fourteenth Amendments to the United States Constitution to be free from unreasonable or unlawful searches and seizures, and Lumsden, Diaz, Boyle, and Cerezo therefore are liable to Plaintiff for damages under 42 U.S.C. § 1983.

48. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**FOURTH CLAIM FOR RELIEF:
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983
AGAINST LUMSDEN, DIAZ, AND BOYLE**

49. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

50. Plaintiff's seizure and detention at the hands of Lumsden, Diaz, and Boyle was made in the absence of probable cause or arguable probable cause.

51. Even assuming arguendo that Plaintiff's arrest was lawful, Lumsden, Diaz, and Boyle engaged in the use of force that was excessive, malicious, gratuitous, and with the intention of inflicting physical and psychological harm to plaintiff.

52. The behavior of these Defendants was the proximate cause of the physical and psychological injuries that plaintiff sustained on the date of his arrest.

53. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**FIFTH CLAIM FOR RELIEF:
FAILURE TO INTERCEDE UNDER 42 U.S.C. § 1983
AGAINST LUMSDEN, DIAZ, AND BOYLE**

54. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

55. By their conduct and under color of state law, Defendants Lumsden, and Diaz had opportunities to intercede on behalf of Plaintiff to prevent her false arrest and the excessive force used against her, but, due to their intentional conduct, recklessness, or deliberate indifference, declined or refused to do so.

56. These Defendants' failures to intercede violated Plaintiff's clearly established constitutional right to be free from unreasonable search and seizure and not to be deprived of liberty without due process of law as guaranteed by the Fourth, and Fourteenth Amendments.

57. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**SIXTH CLAIM FOR RELIEF:
INTENTIONAL, RECKLESS, OR NEGLIGENT INFLECTION OF EMOTIONAL
DISTRESS UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, BOYLE, AND CEREZO**

58. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

59. The improper, deliberate, and traumatizing conduct of Lumsden, Diaz, Boyle, and Cerezo in deliberately causing, or recklessly disregarding the risk of causing, the traumatic assault on and false arrest of Plaintiff directly and proximately caused the grievous injuries and damages set forth above.

60. In the alternative, Lumsden, Diaz, Boyle, and Cerezo acted negligently and grossly negligently, and in breach of their duties owed to Plaintiff.

61. As a result of the above tortious conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**SEVENTH CLAIM FOR RELIEF:
NEGLIGENCE UNDER STATE LAW
AGAINST LUMSDEN, DIAZ, BOYLE, CEREZO, AND MANHATTAN COLLEGE**

62. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

63. Defendants Lumsden, Diaz, Boyle, Cerezo, and Manhattan College are liable for negligence, having breached their duty of reasonable care to Plaintiff.

64. As a result of the above tortious conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom.

**EIGHTH CLAIM FOR RELIEF:
RESPONDEAT SUPERIOR UNDER STATE LAW
AGAINST THE CITY OF NEW YORK AND MANHATTAN COLLEGE**

65. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

66. At all times relevant to this Complaint, Lumsden, Diaz, and Boyle acted as agents of the City of New York, in furtherance of the business, including law enforcement functions, of the City of New York, and within the scope of their employment or agency with the City of New York.

67. Under the doctrine of respondeat superior, the City of New York is liable for its agents' state law torts, detailed above.

68. At all times relevant to this Complaint, Cerezo acted as and agent of Manhattan College, in furtherance of its business, and at all times Cerezo was acting within the scope of his employment.

69. Under the doctrine of respondeat superior, Manhattan College is liable for its agents' state law torts, detailed above.

**NINTH CLAIM FOR RELIEF:
FAILURE TO TRAIN AND SUPERVISE UNDER STATE LAW
AGAINST THE CITY OF NEW YORK AND MANHATTAN COLLEGE**

70. Plaintiff hereby incorporates by reference all of the foregoing paragraphs and further alleges as follows:

71. At all times relevant to this Complaint, the City of New York knew that Lumsden, Diaz, and Boyle would face instances where they needed to evaluate whether an individual was a danger to herself or others, and required medical care, and an individual who did not need to be subject to arrest.

72. The City of New York failed to train and properly supervise Lumsden, Diaz, and Boyle with respect to alleged emotionally disturbed persons. This negligent failure was the proximate cause of Plaintiff's injuries, detailed above.

73. Under the doctrine of respondeat superior, the City of New York is liable for its agents' state law torts, detailed above.

74. At all times relevant to this Complaint, Manhattan College knew that Cerezo would face instances where they needed to evaluate whether an individual was a danger to herself or others, and required medical care.

75. Manhattan College failed to train and properly supervise Cerezo with respect to alleged emotionally disturbed persons. This negligent failure was the proximate cause of Plaintiff's injuries, detailed above

**NINTH CLAIM FOR RELIEF:
VIOLATION OF ARTICLE I, § 12 OF THE NEW YORK STATE CONSTITUTION
AGAINST ALL DEFENDANTS**

76. Plaintiff repeats, reiterates, and re-alleges each and every allegation contained in the above paragraphs with the same force and effect as if fully set forth herein.

77. That by virtue of the aforementioned acts, Lumsden, Diaz, and Boyle are liable to Plaintiff for violating her right to be free of unreasonable and unlawful searches and seizures under Article I, § 12 of the New York State Constitution.

78. The acts and conduct of the agents and employees of defendants were the direct and proximate cause of injury and damage to Plaintiff and violated her statutory and common law rights as guaranteed by the laws and Constitution of the State of New York.

79. As a result of the above unconstitutional conduct, Plaintiff was caused to suffer physical, psychological and emotional injuries, emotional distress, anguish, anxiety, fear, humiliation, and loss of freedom

WHEREFORE, Plaintiff Nailah Gary demands the following relief jointly and severally against all of the defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empaneling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
April 23, 2018

Rickner PLLC

By:


Rob Rickner

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New York, New York 10279
Phone: (212) 300-6506

Fax: (888) 390-5401
Attorney for Plaintiff

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----x
Nailah Gary

Plaintiff/Petitioner,

-against-

Index No. 24708/2018E

The City of New York, Rohan Lumsden, Joseph Diaz,
James Boyle, Manhattan College, Juan

Defendant/Respondent.
-----x

**NOTICE OF COMMENCEMENT OF ACTION SUBJECT
TO MANDATORY ELECTRONIC FILING**

PLEASE TAKE NOTICE that the matter captioned above has been commenced as an electronically filed case in the New York State Courts Electronic Filing System ("NYSCEF") as required by CPLR § 2111 and Uniform Rule § 202.5-bb (mandatory electronic filing). This notice is being served as required by that rule.

NYSCEF is designed for the electronic filing of documents with the County Clerk and the court and for the electronic service of those documents, court documents, and court notices upon counsel and unrepresented litigants who have consented to electronic filing.

Electronic filing offers significant benefits for attorneys and litigants, permitting papers to be filed with the County Clerk and the court and served on other parties simply, conveniently, and quickly. NYSCEF case documents are filed with the County Clerk and the court by filing on the NYSCEF Website, which can be done at any time of the day or night on any day of the week. The documents are served automatically on all consenting e-filers as soon as the document is uploaded to the website, which sends out an immediate email notification of the filing.

The NYSCEF System charges no fees for filing, serving, or viewing the electronic case record, nor does it charge any fees to print any filed documents. Normal filing fees must be paid, but this can be done on-line.

Parties represented by an attorney: An attorney representing a party who is served with this notice must either: 1) immediately record his or her representation within the e-filed matter on the NYSCEF site; or 2) file the Notice of Opt-Out form with the clerk of the court where this action is pending. Exemptions from mandatory e-filing are limited to attorneys who certify in good faith that they lack the computer hardware and/or scanner and/or internet connection or that they lack (along with all employees subject to their direction) the operational knowledge to comply with e-filing requirements. [Section 202.5-bb(e)]

Parties not represented by an attorney: Unrepresented litigants are exempt from e-filing. They can serve and file documents in paper form and must be served with documents in paper form. However, an unrepresented litigant may participate in e-filing.

For information on how to participate in e-filing, unrepresented litigants should contact the appropriate clerk in the court where the action was filed or visit www.nycourts.gov/efileunrepresented. Unrepresented litigants also are encouraged to visit www.nycourthelp.gov or contact the Help Center in the court where the action was filed. An unrepresented litigant who consents to e-filing may cease participation at any time. However, the other parties may continue to e-file their court documents in the case.

For additional information about electronic filing and to create a NYSCEF account, visit the NYSCEF website at www.nycourts.gov/efile or contact the NYSCEF Resource Center (phone: 646-386-3033; e-mail: efile@nycourts.gov).

Dated: 04/23/2018


Signature

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9/3/15